

STATE OF INDIANA )

) IN THE VANDERBURGH CIRCUIT COURT

COUNTY OF VANDERBURGH )

) SS:

AVC NO. 02-041IN RE: HEALTH & FITNESS  
CONSULTANTS, INC., )

) MISCELLANEOUS DOCKET

Respondent )

) NO. 82COI-0207-MI-522ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Steve Carter, Attorney General of Indiana, and Roy P. Coffey, Deputy Attorney General, and the Respondent, Health & Fitness Consultants, Inc., enter into an Assurance of Voluntary Compliance (Assurance) pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondent has its principal mailing address at 330 Marie Avenue E, West St. Paul, MN 55118, and was a party to consumer transactions with Indiana consumers
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Indiana Attorney General's Office to investigate matters hereinafter described, pursuant to the authority of Ind. Code § 4-6-9-4 and Ind. Code § 24-5-0.5-1 *et seq.*
4. Respondent agrees, pursuant to Ind. Code § 24-5-7-5, every Indiana health spa service contract that it furnishes buyers shall contain the buyer's cancellation rights, shall be in

writing, and a copy of buyer's cancellation rights shall be furnished to the buyer at the time the contract is formed.

5. Respondent agrees that, pursuant to Ind. Code § 24-5-7-3(b), an Indiana health spa may allow a buyer to renew a health spa contract for additional periods. Respondent agrees that it will not unilaterally extend a buyer's health spa contract period by means of a negative option clause beyond a maximum contract term of three (3) years.

6. Respondent agrees that every Indiana health spa services contract it furnishes to buyers will advise the buyer in at least ten (10) point boldface type of the buyer's right to cancel the contract by providing written notice, in any form, delivered in person or mailed by certified or registered mail to the seller at the address specified in the contract before midnight of the third full business day after the buyer signs the contract.

7. Respondent agrees that all money paid under an Indiana health spa services contract that it furnishes to buyers which is terminated in accordance with Ind. Code 24-5-7-5 shall be refunded within thirty (30) days of receipt of the notice of cancellation.

8. Respondent agrees, pursuant to Indiana Code § 24-5-7-6, every Indiana health spa service contract that has not been canceled pursuant to section 5 of the Indiana Health Spa Services Act (paragraphs 4, 6, and 7 of this Assurance) shall contain a provision in at least ten (10) point boldface type that the buyer or the buyer's estate may cancel the contract if any of the following occur:

- a. The buyer dies.
- b. The buyer becomes totally physically disabled for the duration of the contract.
- c. The health spa facility operated by the seller is moved to a location that is more than five (5) miles away from the original facility. However, if a health spa facility is closed at any site and facility with similarly health

spa services is operated less than five (5) miles away from the closed facility, then the buyer's contract may be transferred to the operating facility, if the operator of the facility to which the contract is to be transferred accepts the transfer.

- d. The services are not longer available as provided in the contract because of the seller's permanent discontinuance of operation.

9. Respondent agrees, pursuant to Indiana Code § 24-5-7-7, that when a buyer is required by Respondent to submit to a physical examination to verify total physical disability, the physician shall be acceptable to the buyer and the cost of the examination shall be borne by the health spa.

10. Regardless of the date of the contract, Respondent agrees to issue a refund of any portion of the health spa service agreement proceeds received by Respondent and to cancel the health spa service contract of any consumer who files a complaint with the Indiana Attorney General's Office in which the health spa service contract issued by Respondent to the consumer contains any violations of the Indiana Health Spa Services Act. Notwithstanding the foregoing, Respondent shall not be liable to refund more money than it collected from health spa service contracts issued by Respondent to Indiana consumers that contain any violations of the Indiana Health Spa Services Act. Respondent agrees that at the request of the Office of the Attorney General, it will provide documentation of sums received by the Respondent from the sale of health spa service agreements in violation of the Indiana Health Spa Services Act.

11. Respondent, in soliciting and/or contracting with consumers agrees to comply in all aspects with the Indiana Health Spa Services Act, Ind. Code § 24-5-7-1 *et seq.*

12. Respondent, in soliciting and/or contracting with consumers agrees to comply in all aspects with the Indiana Deceptive Consumers Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*

13. Respondent hereby cancels the health spa services contract of Linda Franks, 1623 Bartlett Avenue, Evansville, IN 47711, and upon execution of this Assurance, shall pay Thirty-Nine Dollars (\$39.00) to the Office of the Attorney General for the benefit of Linda Franks.

14. Upon execution of this Assurance, Respondent shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General.

15. Respondent shall fully cooperate with the Office of the Attorney General in the investigation and resolution of any future written complaints the Indiana Consumer Protection Division receives to which Respondent is a party.

16. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

17. The Office of the Attorney General shall file this Assurance in the Circuit Court of Vanderburgh County. The Court's approval of this Assurance shall not act as a bar to any private right of action but shall constitute the sole action of the Attorney General with respect hereto.

Dated this 9<sup>th</sup> day of July, 2002.

STATE OF INDIANA

STEVE CARTER  
Attorney General of Indiana

By: 

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RESPONDENT

HEALTH & FITNESS CONSULTANTS,  
INC.

By: 

Name: Chuck Ronyon  
Title: Pres

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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Judge, Vanderburgh Circuit Court

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